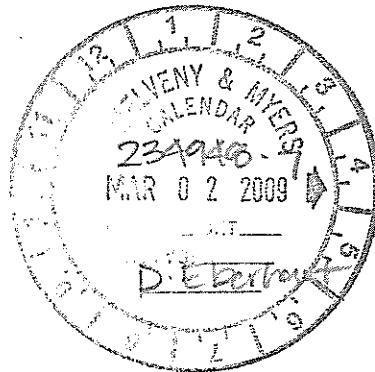


EXHIBIT 7

1 RONALD RUS, #67369
rrus@rusmiliband.com
2 LEO J. PRESIADO, #166721
lpresiado@rusmiliband.com
3 RUS, MILIBAND & SMITH
A Professional Corporation
4 Seventh Floor
2211 Michelson Drive
5 Irvine, California 92612
Telephone: (949) 752-7100
6 Facsimile: (949) 252-1514



Attorneys for Defendants
THUNDERWOOD HOLDINGS, INC.,
BRIAN DUNNING, and BRIANDUNNING.COM

13 EBAY INC.,) CASE NO. C 08-4052 JF
14 Plaintiff,)
15 vs.)
16 DIGITAL POINT SOLUTIONS, INC.;)
17 SHAWN HOGAN; KESSLER's FLYING)
18 CIRCUS; THUNDERWOOD HOLDINGS,)
19 INC.; TODD DUNNING; DUNNING)
ENTERPRISES, INC.; BRIAN DUNNING;)
BRIANDUNNING.COM; and DOES 1-20,)
20 Defendants.)
RESPONSES OF DEFENDANT
BRIAN DUNNING TO FIRST SET OF
REQUESTS FOR PRODUCTION
PROPOUNDED BY PLAINTIFF
EBAY INC.

22 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

23 | RESPONDING PARTY: DEFENDANT BRIAN DUNNING

24 SET NO.: ONE (1)

25 Defendant Brian Dunning ("Defendant" and/or "Responding Party") hereby
26 responds to the First Set of Requests for Production (Nos. 1-32) propounded by Plaintiff eBay
27 Inc. ("Plaintiff" and/or "Propounding Party") as follows:

28 | //

GENERAL STATEMENT

2 Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was
3 granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been
4 dismissed with leave to amend. No amended complaint has been filed and/or served in
5 this action. As such, there is no pending claim against Defendant and Defendant is not
6 required to respond to Plaintiff's discovery request. In this regard, Defendant requested
7 that Plaintiff acknowledge that no response is required or, in the alternative, grant
8 Defendant an extension of time to respond to the discovery requests until some time after
9 Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused
10 Defendant's request without explanation. Defendant serves these responses out of an
11 abundance of caution in the event it is determined that such responses are required despite
12 the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves
13 the right to withdraw these responses in total and otherwise object to the use, reference to,
14 or disclosure of these responses in any manner for any purpose.

15 Defendant has invoked his privilege against self-incrimination pursuant to the
16 Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973),
17 Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and
18 California Evidence Code section 940. Should Defendant determine that there is no longer the
19 threat of potential criminal prosecution and elect to withdraw his privilege against
20 self-incrimination in the future, Defendant expressly reserves the right to supplement his
21 responses.

22 Furthermore, the Federal Bureau of Investigation has seized all documents and
23 computers, disk drives, hard drives, cell phones and servers containing information potentially
24 related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this
25 investigation has refused all requests to provide defendants with a copy of the material seized
26 by the FBI. Those items and records may contain information responsive to the requests
27 below, but those items and records are not in the possession, custody or control of Defendants.

28 | //

1 At the time of making Defendant's initial disclosures, Defendant produced all
 2 documents relevant to this case that are in his possession, custody and control. Commission
 3 Junction, Inc. has also produced documents in the related state action *Commission Junction,*
 4 *Inc. v. Thunderwood Holdings, Inc., et al., Superior Court, Orange County*, Case No. 30-2008
 5 00101025 that may include documents responsive to this request, but such documents are
 6 subject to a Confidentiality Order.

7 Without waiving any of the foregoing, Responding Party responds to the
 8 requests below:

9 **RESPONSES**

10 **REQUEST FOR PRODUCTION NO. 1:**

11 All documents relating to eBay, including all agreements, terms of service and
 12 terms and conditions.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

14 Defendant objects to this request on the grounds that it violates Defendant's
 15 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 16 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 17 Section 15 of the California Constitution, and California Evidence Code section 940.
 18 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 19 unduly burdensome and oppressive. Defendant further objects that this request seeks
 20 documents which are neither relevant to the subject matter of this action, nor reasonably
 21 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 22 request on the grounds that, as phrased, the request seeks documents the disclosure of which
 23 might violate the attorney-client privilege and/or the work product doctrine. Defendant further
 24 objects to this request on the ground that it seeks production of trade secrets or other
 25 confidential information.

26 **REQUEST FOR PRODUCTION NO. 2:**

27 All documents relating to, or Communications with, eBay or any current or
 28 former employee of eBay.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

2 Defendant objects to this request on the grounds that it violates Defendant's
 3 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 4 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 5 Section 15 of the California Constitution, and California Evidence Code section 940.
 6 Defendant further objects on the ground that this request is duplicative, vague and ambiguous,
 7 overbroad, unduly burdensome and oppressive. Defendant further objects that this request
 8 seeks documents which are neither relevant to the subject matter of this action, nor reasonably
 9 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 10 request on the grounds that, as phrased, the request seeks documents the disclosure of which
 11 might violate the attorney-client privilege and/or the work product doctrine. Defendant further
 12 objects to this request on the ground that it seeks production of trade secrets or other
 13 confidential information.

14 **REQUEST FOR PRODUCTION NO. 3:**

15 All documents relating to payment of commissions or other revenue obtained by
 16 Brian Dunning through participation in, interaction with or manipulation of eBay's Affiliate
 17 Marketing Program.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

19 Defendant objects to this request on the grounds that it violates Defendant's
 20 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 21 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 22 Section 15 of the California Constitution, and California Evidence Code section 940.

23 Defendant further objects on the ground that the this request is vague and ambiguous,
 24 overbroad, unduly burdensome and oppressive. Defendant further objects on the grounds that
 25 the term "manipulation" is vague, argumentative and conclusory. Defendant further objects to
 26 this request on the grounds that, as phrased, the request seeks documents the disclosure of
 27 which might violate the attorney-client privilege and/or the work product doctrine. Defendant
 28 ///

1 further objects to this request on the ground that it violates Defendant's right to privacy, and
 2 seeks production of trade secrets or other confidential information.

3 **REQUEST FOR PRODUCTION NO. 4:**

4 All documents relating to eBay's Affiliate Marketing Program, including, but
 5 not limited to, all methods and technologies used by Brian Dunning to obtain revenue from,
 6 manipulate or otherwise interact with, eBay's Affiliate Marketing Program, including, but not
 7 limited to, all software, source code, Javascript, and HTML code.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

9 Defendant objects to this request on the grounds that it violates Defendant's
 10 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 11 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 12 Section 15 of the California Constitution, and California Evidence Code section 940.
 13 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 14 unduly burdensome and oppressive. Defendant further objects on the grounds that the term
 15 "manipulate" is vague, argumentative and conclusory. Defendant further objects to this
 16 request on the grounds that, as phrased, the request seeks documents the disclosure of which
 17 might violate the attorney-client privilege and/or the work product doctrine. Defendant further
 18 objects to this request on the ground that it violates Defendant's right to privacy, and seeks
 19 production of trade secrets or other confidential information.

20 **REQUEST FOR PRODUCTION NO. 5:**

21 All documents relating to advertisements for eBay used, or purported to be used,
 22 on any website or ad network that directed or referred Users to eBay as part of eBay's Affiliate
 23 Marketing Program.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

25 Defendant objects to this request on the grounds that it violates Defendant's
 26 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 27 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 28 Section 15 of the California Constitution, and California Evidence Code section 940.

1 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 2 unduly burdensome and oppressive. Defendant further objects to this request on the grounds
 3 that, as phrased, the request seeks documents the disclosure of which might violate the
 4 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
 5 request on the ground that it seeks production of trade secrets or other confidential information.

6 **REQUEST FOR PRODUCTION NO. 6:**

7 All documents reflecting the number of Users who allegedly clicked on an
 8 advertisement for eBay used, or purported to be used, by Brian Dunning to direct or refer
 9 Users to eBay as part of eBay's Affiliate Marketing Program.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

11 Defendant objects to this request on the grounds that it violates Defendant's
 12 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 13 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 14 Section 15 of the California Constitution, and California Evidence Code section 940.
 15 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 16 unduly burdensome and oppressive. Defendant further objects to this request on the grounds
 17 that, as phrased, the request seeks documents the disclosure of which might violate the
 18 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
 19 request on the ground that it seeks production of trade secrets or other confidential information.

20 **REQUEST FOR PRODUCTION NO. 7:**

21 All documents relating to methods or techniques intended to, or causing, a
 22 User's browser to load any eBay webpage, webpage content or data therefrom.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

24 Defendant objects to this request on the grounds that it violates Defendant's
 25 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 26 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 27 Section 15 of the California Constitution, and California Evidence Code section 940.
 28 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,

1 unduly burdensome and oppressive. Defendant further objects to this request on the grounds
 2 that, as phrased, the request seeks documents the disclosure of which might violate the
 3 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
 4 request on the ground that it violates Defendant's right to privacy, and seeks production of
 5 trade secrets or other confidential information.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 All documents sufficient to identify all advertising networks, advertising
 8 syndication services or websites used or purportedly used by Brian Dunning to advertise
 9 or promote eBay or to interact in any way with eBay or eBay's Affiliate Marketing Programs.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

11 Defendant objects to this request on the grounds that it violates Defendant's
 12 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 13 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 14 Section 15 of the California Constitution, and California Evidence Code section 940.
 15 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 16 unduly burdensome and oppressive. Defendant further objects to this request on the grounds
 17 that, as phrased, the request seeks documents the disclosure of which might violate the
 18 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
 19 request on the ground that it violates Defendant's right to privacy, and seeks production of
 20 trade secrets or other confidential information.

21 **REQUEST FOR PRODUCTION NO. 9:**

22 All documents sufficient to identify all Affiliate Marketing Programs, not
 23 including eBay's Affiliate Marketing Program, with whom Brian Dunning obtained revenue or
 24 otherwise interacted.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

26 Defendant objects to this request on the grounds that it violates Defendant's
 27 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 28 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,

1 Section 15 of the California Constitution, and California Evidence Code section 940.
 2 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 3 unduly burdensome and oppressive. Defendant further objects that to the extent this request
 4 seeks documents related to programs other than eBay's Affiliate Marketing Program, the
 5 request is neither relevant to the subject matter of this action, nor reasonably calculated to lead
 6 to the discovery of admissible evidence. Defendant further objects to this request on the
 7 grounds that, as phrased, the request seeks documents the disclosure of which might violate the
 8 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
 9 request on the ground that it violates Defendant's right to privacy, and seeks production of
 10 trade secrets or other confidential information.

11 **REQUEST FOR PRODUCTION NO. 10:**

12 All documents relating to and/or describing methods and techniques used by any
 13 other Affiliate Marketing Program that Brian Dunning interacted with, participated in or
 14 manipulated.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

16 Defendant objects to this request on the grounds that it violates Defendant's
 17 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 18 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 19 Section 15 of the California Constitution, and California Evidence Code section 940.

20 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 21 unduly burdensome and oppressive. Defendant further objects on the grounds that the term
 22 "manipulated" is vague, argumentative and conclusory. Defendant further objects that to the
 23 extent this request seeks documents related to programs other than eBay's Affiliate Marketing
 24 Program, the request is neither relevant to the subject matter of this action, nor reasonably
 25 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 26 request on the grounds that, as phrased, the request seeks documents the disclosure of which
 27 might violate the attorney-client privilege and/or the work product doctrine. Defendant further
 28

///

1 objects to this request on the ground that it violates Defendant's right to privacy, and seeks
 2 production of trade secrets or other confidential information.

3 **REQUEST FOR PRODUCTION NO. 11:**

4 All documents sufficient to identify the source of any technology, technique or
 5 method used by Brian Dunning to participate in, manipulate or interact with the eBay Affiliate
 6 Marketing Program, or any other Affiliate Marketing Program.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

8 Defendant objects to this request on the grounds that it violates Defendant's
 9 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 10 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 11 Section 15 of the California Constitution, and California Evidence Code section 940.
 12 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 13 unduly burdensome and oppressive. Defendant further objects on the grounds that the term
 14 "manipulate" is vague, argumentative and conclusory. Defendant further objects that to the
 15 extent this request seeks documents related to programs other than eBay's Affiliate Marketing
 16 Program, the request is neither relevant to the subject matter of this action, nor reasonably
 17 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 18 request on the grounds that, as phrased, the request seeks documents the disclosure of which
 19 might violate the attorney-client privilege and/or the work product doctrine. Defendant further
 20 objects to this request on the ground that it violates Defendant's right to privacy, and seeks
 21 production of trade secrets or other confidential information.

22 **REQUEST FOR PRODUCTION NO. 12:**

23 All documents sufficient to identify any individuals, groups, books, manuals or
 24 other materials consulted by Brian Dunning while developing any technology, technique
 25 or method used by Brian Dunning to participate in, manipulate or interact with the eBay
 26 Affiliate Marketing Program, or any other Affiliate Marketing Program.

27 / / /

28 / / /

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

2 Defendant objects to this request on the grounds that it violates Defendant's
 3 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 4 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 5 Section 15 of the California Constitution, and California Evidence Code section 940.
 6 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 7 unduly burdensome and oppressive. Defendant further objects on the grounds that the term
 8 "manipulate" is vague, argumentative and conclusory. Defendant further objects that to the
 9 extent this request seeks documents related to programs other than eBay's Affiliate Marketing
 10 Program, the request is neither relevant to the subject matter of this action, nor reasonably
 11 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 12 request on the grounds that, as phrased, the request seeks documents the disclosure of which
 13 might violate the attorney-client privilege and/or the work product doctrine. Defendant further
 14 objects to this request on the ground that it violates Defendant's right to privacy, seeks
 15 production of trade secrets or other confidential information.

16 **REQUEST FOR PRODUCTION NO. 13:**

17 All documents relating to Commission Junction, including all agreements, terms
 18 of service and terms and conditions.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

20 Defendant objects to this request on the grounds that it violates Defendant's
 21 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 22 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 23 Section 15 of the California Constitution, and California Evidence Code section 940.
 24 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 25 unduly burdensome and oppressive. Defendant further objects to this request on the grounds
 26 that, as phrased, the request seeks documents the disclosure of which might violate the
 27 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
 28 request on the ground that it seeks production of trade secrets or other confidential information.

1 **REQUEST FOR PRODUCTION NO. 14:**

2 All documents relating to, or Communications with, Commission Junction or
3 any current or former employee of Commission Junction.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

5 Defendant objects to this request on the grounds that it violates Defendant's
6 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
7 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
8 Section 15 of the California Constitution, and California Evidence Code section 940.
9 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
10 unduly burdensome and oppressive. Defendant further objects to this request on the grounds
11 that, as phrased, the request seeks documents the disclosure of which might violate the
12 attorney-client privilege and/or the work product doctrine. Defendant further objects to this
13 request on the ground that it seeks production of trade secrets or other confidential information.

14 **REQUEST FOR PRODUCTION NO. 15:**

15 All documents relating to, or Communications with, Digital Point Solutions,
16 Inc., Kessler's Flying Circus, Thunderwood Holdings, Inc., Dunning Enterprise, Inc., or
17 briandunning.com.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

19 Defendant objects to this request on the grounds that it violates Defendant's
20 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
21 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
22 Section 15 of the California Constitution, and California Evidence Code section 940.
23 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
24 unduly burdensome and oppressive. Defendant further objects that this request seeks
25 documents which are neither relevant to the subject matter of this action, nor reasonably
26 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
27 request on the grounds that, as phrased, the request seeks documents the disclosure of which
28 might violate the attorney-client privilege and/or the work product doctrine. Defendant further

1 objects to this request on the ground that it violates Defendant's right to privacy, seeks
 2 production of trade secrets or other confidential information.

3 **REQUEST FOR PRODUCTION NO. 16:**

4 All Communications with Todd Dunning or Shawn Hogan.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

6 Defendant objects to this request on the grounds that it violates Defendant's
 7 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 8 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 9 Section 15 of the California Constitution, and California Evidence Code section 940.

10 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 11 unduly burdensome and oppressive. Defendant further objects that this request seeks
 12 documents which are neither relevant to the subject matter of this action, nor reasonably
 13 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 14 request on the ground that it violates privacy rights of Defendant and third parties. Defendant
 15 further objects to this request on the ground that it violates Defendant's right to privacy, and
 16 seeks production of trade secrets or other confidential information.

17 **REQUEST FOR PRODUCTION NO. 17:**

18 All documents relating to, or Communications with, Rachael Hughes, or any
 19 companies or entities owned, controlled, affiliated with or used by Rachael Hughes, relating to
 20 eBay's Affiliate Marketing Program including, but not limited to, any agreements with Rachael
 21 Hughes and company and any technology transferred to or from Rachael Hughes and company.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

23 Defendant objects to this request on the grounds that it violates Defendant's
 24 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 25 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 26 Section 15 of the California Constitution, and California Evidence Code section 940.

27 Defendant further objects on the ground that this request is vague and ambiguous, and Plaintiff
 28 has failed to identify the person or entity Rachel Hughes. Defendant further objects that this

1 request seeks documents which are neither relevant to the subject matter of this action, nor
2 reasonably calculated to lead to the discovery of admissible evidence.

3 **REQUEST FOR PRODUCTION NO. 18:**

4 All documents sufficient to describe all phone numbers, email addresses, web
5 pages, instant messenger or mail accounts and social network accounts maintained, formerly
6 maintained or registered to Brian Dunning.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

8 Defendant objects to this request on the grounds that it violates Defendant's
9 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
10 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
11 Section 15 of the California Constitution, and California Evidence Code section 940.

12 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
13 unduly burdensome and oppressive. Defendant further objects that this request seeks
14 documents which are neither relevant to the subject matter of this action, nor reasonably
15 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
16 request on the ground that it violates Defendant's right to privacy, and seeks production of
17 trade secrets or other confidential information.

18 **REQUEST FOR PRODUCTION NO. 19:**

19 Documents sufficient to identify any Aliases used by Brian Dunning in any
20 Internet Forum at or within which Brian Dunning discussed any aspect of their participation in,
21 manipulation of or interaction with eBay's Affiliate Marketing Program, or any other Affiliate
22 Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet
23 newsgroups or chat rooms.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

25 Defendant objects to this request on the grounds that it violates Defendant's
26 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
27 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
28 Section 15 of the California Constitution, and California Evidence Code section 940.

1 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 2 unduly burdensome and oppressive. Defendant further objects that to the extent this request
 3 seeks documents related to programs other than eBay's Affiliate Marketing Program, the
 4 request is neither relevant to the subject matter of this action, nor reasonably calculated to lead
 5 to the discovery of admissible evidence. Defendant further objects on the grounds that the term
 6 "manipulation" is vague, argumentative and conclusory. Defendant further objects to this
 7 request on the ground that it violates Defendant's right to privacy, and seeks production of
 8 trade secrets or other confidential information.

9 **REQUEST FOR PRODUCTION NO. 20:**

10 Documents sufficient to identify any Internet Forum at or within which Brian
 11 Dunning discussed any aspect of his participation in, manipulation of or interaction with eBay's
 12 Affiliate Marketing Programs, or any other Affiliate Marketing Programs, including, but not
 13 limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

15 Defendant objects to this request on the grounds that it violates Defendant's
 16 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 17 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 18 Section 15 of the California Constitution, and California Evidence Code section 940.
 19 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 20 unduly burdensome and oppressive. Defendant further objects on the grounds that the term
 21 "manipulation" is vague, argumentative and conclusory. Defendant further objects that to the
 22 extent this request seeks documents related to programs other than eBay's Affiliate Marketing
 23 Program, the request is neither relevant to the subject matter of this action, nor reasonably
 24 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 25 request on the ground that it violates Defendant's right to privacy, seeks production of trade
 26 secrets or other confidential information.

27 / / /

28 / / /

1 **REQUEST FOR PRODUCTION NO. 21:**

2 Documents sufficient to identify all internet service providers (ISPs) and IP
 3 addresses used by Brian Dunning.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

5 Defendant objects to this request on the grounds that it violates Defendant's
 6 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 7 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 8 Section 15 of the California Constitution, and California Evidence Code section 940.
 9 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 10 unduly burdensome and oppressive. Defendant further objects that this request seeks
 11 documents which are neither relevant to the subject matter of this action, nor reasonably
 12 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 13 request on the ground that it violates Defendant's right to privacy, seeks production of trade
 14 secrets or other confidential information.

15 **REQUEST FOR PRODUCTION NO. 22:**

16 Documents sufficient to identify all computers, servers, electronic data storage
 17 and hosting companies, entities, or facilities used by Brian Dunning.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

19 Defendant objects to this request on the grounds that it violates Defendant's
 20 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 21 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 22 Section 15 of the California Constitution, and California Evidence Code section 940.
 23 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 24 unduly burdensome and oppressive. Defendant further objects that this request seeks
 25 documents which are neither relevant to the subject matter of this action, nor reasonably
 26 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 27 request on the ground that it violates Defendant's right to privacy, seeks production of trade
 28 secrets or other confidential information.

1 **REQUEST FOR PRODUCTION NO. 23:**

2 Documents sufficient to identify any entity used or hired to maintain or restore
 3 electronic data or systems relating to Brian Dunning's participation in, manipulation of or
 4 interaction with eBay's Affiliate Marketing Program.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

6 Defendant objects to this request on the grounds that it violates Defendant's
 7 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 8 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 9 Section 15 of the California Constitution, and California Evidence Code section 940.
 10 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 11 unduly burdensome and oppressive. Defendant further objects on the grounds that the term
 12 "manipulation" is vague, argumentative and conclusory. Defendant further objects to this
 13 request on the ground that it violates Defendant's right to privacy, seeks production of trade
 14 secrets or other confidential information.

15 **REQUEST FOR PRODUCTION NO. 24:**

16 Documents sufficient to identify software used to clean, reformat or erase
 17 hard-drives used by Brian Dunning, or any equipment owned, used or maintained by Brian
 18 Dunning.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

20 Defendant objects to this request on the grounds that it violates Defendant's
 21 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 22 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 23 Section 15 of the California Constitution, and California Evidence Code section 940.
 24 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 25 unduly burdensome and oppressive. Defendant further objects that this request seeks
 26 documents which are neither relevant to the subject matter of this action, nor reasonably
 27 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 28 / / /

1 request on the ground that it violates Defendant's right to privacy, seeks production of trade
 2 secrets or other confidential information.

3 **REQUEST FOR PRODUCTION NO. 25:**

4 All documents sufficient to identify all business entities or fictitious business
 5 names currently or formerly maintained by Brian Dunning.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

7 Defendant objects to this request on the grounds that it violates Defendant's
 8 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 9 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 10 Section 15 of the California Constitution, and California Evidence Code section 940.

11 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 12 unduly burdensome and oppressive. Defendant further objects that this request seeks
 13 documents which are neither relevant to the subject matter of this action, nor reasonably
 14 calculated to lead to the discovery of admissible evidence.

15 **REQUEST FOR PRODUCTION NO. 26:**

16 All documents filed by Brian Dunning with any Secretary of State.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

18 Defendant objects to this request on the grounds that it violates Defendant's
 19 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 20 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 21 Section 15 of the California Constitution, and California Evidence Code section 940.

22 Defendant further objects on the ground that this request is overbroad, unduly burdensome and
 23 oppressive. Defendant further objects that this request seeks documents which are neither
 24 relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery
 25 of admissible evidence.

26 / / /

27 / / /

28 / / /

1 **REQUEST FOR PRODUCTION NO. 27:**

2 Documents sufficient to show the structure and organization of all companies or
 3 other entities owned or controlled by Brian Dunning that were involved in or interacted with
 4 any Affiliate Marketing Program.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

6 Defendant objects to this request on the grounds that it violates Defendant's
 7 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 8 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 9 Section 15 of the California Constitution, and California Evidence Code section 940.
 10 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 11 unduly burdensome and oppressive. Defendant further objects that this request seeks
 12 documents which are neither relevant to the subject matter of this action, nor reasonably
 13 calculated to lead to the discovery of admissible evidence.

14 **REQUEST FOR PRODUCTION NO. 28:**

15 Documents sufficient to identify all employees, contractors or temporary
 16 employees of Brian Dunning, their dates of employment, duties, salary and any other
 17 compensation.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

19 Defendant objects to this request on the grounds that it violates Defendant's
 20 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 21 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 22 Section 15 of the California Constitution, and California Evidence Code section 940.
 23 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 24 unduly burdensome and oppressive. Defendant further objects that this request seeks
 25 documents which are neither relevant to the subject matter of this action, nor reasonably
 26 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 27 request on the ground that it violates privacy rights of third parties, seeks production of trade
 28 secrets or other confidential information.

1 **REQUEST FOR PRODUCTION NO. 29:**

2 All documents sufficient to identify all assets and financial accounts (including
 3 those outside of the United States) maintained or formerly maintained by Brian Dunning.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

5 Defendant objects to this request on the grounds that it violates Defendant's
 6 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 7 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 8 Section 15 of the California Constitution, and California Evidence Code section 940.

9 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 10 unduly burdensome and oppressive. Defendant further objects that this request seeks
 11 documents which are neither relevant to the subject matter of this action, nor reasonably
 12 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 13 request on the ground that it violates Defendant's right to privacy and seeks confidential
 14 financial information.

15 **REQUEST FOR PRODUCTION NO. 30:**

16 Documents constituting Brian Dunning's individual tax returns for the years
 17 2003 to the present.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

19 Defendant objects to this request on the grounds that it violates Defendant's
 20 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 21 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 22 Section 15 of the California Constitution, and California Evidence Code section 940.

23 Defendant further objects on the ground that this request is vague and ambiguous, overbroad,
 24 unduly burdensome and oppressive. Defendant further objects that this request seeks
 25 documents which are neither relevant to the subject matter of this action, nor reasonably
 26 calculated to lead to the discovery of admissible evidence. Defendant further objects to this
 27 request on the ground that it violates Defendant's right to privacy, seeks privileged financial
 28 information, see e.g., California Revenue and Taxation Code section 19542.

1 **REQUEST FOR PRODUCTION NO. 31:**

2 All documents relating to the transfer or assumption of any liability by Brian
 3 Dunning.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

5 Defendant objects to this request on the grounds that it violates Defendant's
 6 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 7 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 8 Section 15 of the California Constitution, and California Evidence Code section 940.
 9 Defendant further objects to this request on the grounds that, as phrased, the request seeks
 10 documents the disclosure of which might violate the attorney-client privilege and/or the work
 11 product doctrine. Defendant further objects on the ground that this request is vague and
 12 ambiguous, overbroad, unduly burdensome and oppressive. Defendant further objects that this
 13 request seeks documents which are neither relevant to the subject matter of this action, nor
 14 reasonably calculated to lead to the discovery of admissible evidence. Defendant further
 15 objects to this request on the ground that it violates Defendant's right to privacy, and seeks
 16 production of trade secrets or other confidential information.

17 **REQUEST FOR PRODUCTION NO. 32:**

18 All documents relating to any insurance policies relevant to this action.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

20 Defendant objects to this request on the grounds that it violates Defendant's
 21 privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution,
 22 *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1,
 23 Section 15 of the California Constitution, and California Evidence Code section 940.
 24 Defendant further objects to this request on the grounds that, as phrased, the request seeks
 25 documents the disclosure of which might violate the attorney-client privilege and/or the work

26 / / /

27 / / /

28 / / /

1 product doctrine. Defendant further objects on the ground that this request is vague and
2 ambiguous.

3

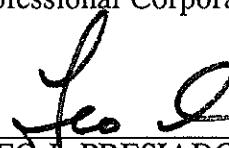
4 DATED: February 26, 2009

RUS, MILIBAND & SMITH
A Professional Corporation

5

6

By:


LEO J. PRESIADO

Attorneys for Defendants
Thunderwood Holdings, Inc., Brian Dunning
and BrianDunning.com

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On February 26, 2009, I served the foregoing documents described as **RESPONSES OF DEFENDANT BRIAN DUNNING TO FIRST SET OF REQUESTS FOR PRODUCTION PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

✓ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

— (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

— (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

— (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on **February 26, 2009**, at Irvine, California.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

RHONDA RAEFORD

SERVICE LIST

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052

David R. Eberhart
Sharon M. Bunzel
Colleen M. Kennedy
O'Melveny & Myers
Two Embarcadero, 20th Floor
San Francisco, CA 94111
Tel: (949) 984-8700
Fax: (949) 984-8701
Email: deberhart@omm.com, sbunzel@omm.com
Attorneys for Plaintiff eBay, Inc.

10 Stewart H. Foreman
Freeland, Cooper & Foreman, LLP
11 150 Spear Street, Suite 1800
San Francisco, CA 94105
12 Tel: (949) 541-0200
Fax: (949) 495-4332
13 Email: foreman@freelandlaw.com
14 *Attorneys for Defendants Todd Dunning and Dunning Enterprises, Inc.*

15 Seyamack Kouretchian
16 Coast Law Group, LLP
17 169 Saxony Road
18 Suite 204
19 Encinitas, CA 92024
Tel: (760) 942-8505
Fax: (760) 942-8515
Email: seyamack@coastlawgroup.com
Attorneys for Digital Point Solutions, Inc. and Shawn Hogan

20 Patrick K. McClellan
21 Law Offices of Patrick K. McClellan
22 2211 Michelson Drive, Suite 700
23 Irvine, California 92612
Tel: (949) 261-7615
Fax: (949) 851-2772
Email: pkellymc@pacbell.net
Attorney for Kessler's Flying Circus